

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

GENE FOGLE
Plaintiff,

vs.

STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY
Defendant.

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6:15-cv-140
Civil Action Number

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant State Auto Property & Casualty Insurance Company files this Notice of Removal pursuant to 28 U.S.C. §1446(a), and would respectfully show as follows:

I.
INTRODUCTION

1. Plaintiff is Gene Fogle ("Plaintiff"); Defendant is State Auto Property & Casualty Insurance Company ("State Auto"). There are no other parties. *See* Plaintiff's Original Petition, attached as Exhibit "A - 2".

2. On March 27, 2015, Plaintiff filed Cause No. 276,575-C, *Gene Fogle v. State Auto Property & Casualty Insurance Company*, in the 169th Judicial District Court of Bell County, Texas (the "State Court Action"). *See* Exhibit "A - 2". Plaintiff's suit alleges breach of contract, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and common law bad-faith relating to storm damage allegedly suffered at Plaintiff's home located at 2803 E. Veterans Memorial Blvd., Killeen, Texas 76543. *See* Exhibit "A - 2".

3. Citation was issued on March 27, 2015 and State Auto was served with the suit on March 30, 2015. *See* Exhibit "A - 4" and "A - 5" and Affidavit of Sherri King, attached as Exhibit "B".

State Auto files this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007). State Auto filed an Answer in the 169th District Court of Bell County on April 17, 2015. See Exhibit “A - 6”.

4. Plaintiff has not filed any amended pleadings and no additional parties have been joined. The State Court’s Docket Sheet is attached as Exhibit “A - 7”.

II.

REMOVAL BASED ON DIVERSITY JURISDICTION

5. Pursuant to 28 U.S.C. §1332(a), State Auto removes this case as it involves a controversy between parties of diverse citizenship and an amount in controversy that exceeds \$75,000.

6. Plaintiff is a citizen of Texas. *See* Exhibit “A - 2”. State Auto is a foreign corporation organized under the laws of the state of Iowa with its principal place of business located at 518 E. Broad Street, Columbus, Ohio 43215. *See* Exhibit “B”.

7. Additionally, the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. §1332(a). Plaintiff’s Original Petition seeks “monetary relief over \$200,000 but not more than \$1,000,000.” *See* Exhibit “A - 2”.

8. State Auto is the only defendant in this action, therefore no consent is needed for the removal of this case to federal court.

9. An Index of Exhibits is attached as Exhibit “A”. Copies of all pleadings, process, orders, and other filings in the State Court Action are attached to this notice as Exhibits “A - 1” through “A - 7”, as required by 28 U.S.C. §1446(a).

10. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this District and within this Division.

11. State Auto will promptly file a copy of this notice of removal with the clerk of the court in the pending State Court Action.

III.
JURY DEMANDED

12. Plaintiff demanded a jury in the State Court Action.

VI.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant State Auto prays that this case be removed to the United States District Court for the Western District of Texas, Waco Division, and that further proceedings in the State Court Action be discontinued, and that this Court assume full jurisdiction over such action as provided by law.

Respectfully submitted,

s/Sterling Elza
Sterling Elza
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**ATTORNEY FOR DEFENDANT,
STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served upon the Plaintiff, by serving counsel of record, Gerald T. Drought and Clare L. Pace, Martin & Drought, P.C., Bank of America Plaza, 25th Floor, 300 Convent Street, San Antonio, Texas 78205, via fax and certified mail, return receipt requested, on this the 28th day of April, 2015.

s/ Sterling Elza
Sterling Elza